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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) No. CR 03-687-RGK
13 Plaintiff,) No. CR 03-689-RGK
14 v.) GOVERNMENT'S SENTENCING POSITION
15 JUAN EMANUEL LOCOCO,) RE: RESENTENCING OF DEFENDANT JUAN
16 Defendant.) EMANUEL LOCOCO
17) Hearing Date: 11/3/08
_____)

18 Plaintiff, by and through its attorney of record, the United
19 States Attorney for the Central District of California,
20 hereby files its Sentencing Position regarding the resentencing
21 of defendant Juan Emanuel Lococo following the Ninth Circuit's
22 remand. The government's objections and position regarding
23 sentencing are based on the attached memorandum with exhibits,

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1 the records and files of this case, and any argument that the
2 Court may permit at the sentencing hearing.

3 Dated: September 22, 2008 Respectfully submitted,

4 THOMAS P. O'BRIEN
5 United States Attorney

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7 Assistant United States Attorney
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9 _____/s/_____
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1 **GOVERNMENT'S POSITION RE: RESENTENCING FOLLOWING REMAND**

2 I. INTRODUCTION

3 After this Court sentenced defendant Juan Emanuel Lococo in
4 two related cases, Lococo appealed the conviction and sentence on
5 a number of grounds. The Ninth Circuit agreed with defendant
6 Lococo that the Court committed an Apprendi¹ error when it
7 sentenced defendant based on its finding of the amount of crack
8 cocaine involved in the conspiracy. United States v. Lococo, 514
9 F.3d 860, 865 (9th Cir. 2008). Therefore, the Ninth Circuit
10 vacated defendant's sentence and remanded for resentencing.
11 Defendant's appeal was denied in all other respects, including
12 his claim that the Court's sentence was unreasonable.

13 The Ninth Circuit instructed that "On remand, the district
14 court may only base a section 841(b)(1)(B) enhancement on the
15 quantity of powder cocaine involved in the conspiracy." 514 F.3d
16 at 865. In anticipation of defendant's resentencing, the
17 government asks the Court, based on the evidence in this case, to
18 find beyond a reasonable doubt that, with respect to case CR 03-
19 689,² defendant knowingly conspired to distribute or possess with
20 intent to distribute more than 500 grams of a mixture or
21 substance containing a detectable amount of powder cocaine.

22 _____
23 ¹ Apprendi v. New Jersey, 530 U.S. 466 (2000), requires
24 that any fact, other than a prior conviction, which increases the
25 statutory maximum must be submitted to a jury and proved beyond a
reasonable doubt. In this case, defendant waived his right to
jury determination of drug quantity. See 514 F.3d at 865.

26 ² Because the indictment in case CR 03-687 did not
27 implicate a heightened statutory maximum based on powder cocaine,
the section 841(b)(1)(B) enhancement for powder cocaine is based
28 only on the indictment in CR 03-689. Accordingly, this
memorandum discusses only the CR 03-689 case.

1 II. SUMMARY OF FACTUAL BACKGROUND FOR CR 03-689

2 Defendant Lococo was a member of a conspiracy that engaged
3 in trafficking of powder cocaine and crack cocaine. In this
4 conspiracy, John Edwards instructed Charlotte Jackson to buy
5 powder cocaine. Jackson purchased powder cocaine from defendant
6 and delivered it to Edwards. Edwards then manufactured crack
7 cocaine from the powder cocaine. Edwards gave the crack cocaine
8 to Jackson, who provided it to members of the Blood Stone
9 Villains street gang so that they could make street sales. This
10 conspiracy began on a date unknown and continued until June 26,
11 2003, when defendants were arrested. At the time of his arrest,
12 defendant possessed distribution quantities of powder cocaine and
13 crack cocaine.

14 III. SUMMARY OF PROCEDURAL BACKGROUND

15 Count One of the indictment in CR 03-689 charged Lococo,
16 Jackson, Edwards, and six other individuals with conspiracy to
17 posses with intent to distribute, and to distribute, more than
18 500 grams of cocaine and more than 50 grams of cocaine base, in
19 violation of 21 U.S.C. § 846. (CR³ 57.) An additional count
20 (Count Eleven) charged Lococo with possession of more than five
21 kilograms of cocaine. (Id.)

22 On August 25, 2004, following the government's opening
23 statement at trial, defendant entered a conditional guilty plea
24 pursuant to a written plea agreement. (CR 299, 308.) On July 7,
25 2005, the district court sentenced Lococo to 262 months
26

27 ³ "CR" refers to the Clerk's Record in case CR 03-689 and
28 is followed by the docket control number.

1 imprisonment and five years supervised release for Count One in
2 case CR 03-689 (to be served concurrently with the sentence in CR
3 03-687), and a \$200 special assessment. (CR 399.)

4 IV. FACTS RELEVANT TO RESENTENCING

5 In the plea agreement, defendant admitted the following acts
6 in furtherance of the CR 03-689 drug conspiracy:

7 1. On October 30, 2002, defendant supplied
8 Jackson with crack cocaine and powder cocaine.

9 2. On November 10, 2002, defendant agreed to
10 sell Jackson powder cocaine for a price of \$14,500.

11 3. On June 26, 2003, defendant possessed cocaine
12 powder at his distribution location.

13 (CR 299 at page 17.) Defendant confirmed these admissions at the
14 change of plea hearing. Defendant did not dispute that he sold
15 and possessed powder cocaine, however, he disputed that he knew
16 that the powder cocaine he supplied to Jackson was going to be
17 turned into crack cocaine.

18 Before defendant's original sentencing, the government
19 provided evidence regarding the amount of drugs involved in the
20 conspiracy, including certain amounts pertaining to defendant.
21 (CR 398.) More specifically, the government proffered
22 transcripts of wiretap calls, a declaration from LAPD Officer
23 Mark Brooks regarding the interpretation of coded language used
24 by the defendants as well as the seizures made during the
25 investigation, and laboratory reports establishing the amount and
26 type of narcotics seized. (For ease of reference, the relevant
27 declarations, transcripts, and reports are attached as exhibits
28 to this pleading.)

1 Although defendant refused to admit to the amount of cocaine
2 that he sold to Jackson, the evidence shows beyond a reasonable
3 doubt that on October 30, 2002, defendant sold 993 grams of
4 powder cocaine, and on November 10, 2002, defendant sold one
5 kilogram of powder cocaine. In addition, on June 26, 2003,
6 defendant knowingly possessed more than 5 kilograms of powder
7 cocaine. Furthermore, because defendant was personally involved
8 with each of these events, the amounts of powder cocaine were
9 known and reasonably foreseeable to him.

10 A. Defendant sold 993 grams of cocaine on October 30,
11 2002.

12 On October 30, 2002, as defendant admitted, he supplied
13 Jackson with crack cocaine and powder cocaine. At approximately
14 3:30 p.m. on October 30, 2002, Jackson called J. Edwards. (Exh.
15 A: Call 1-103, Brooks Decl. ¶ 5.) During the conversation,
16 Jackson told J. Edwards, "I'm on my way to your house. I'm on La
17 Brea." J. Edwards asked, "So, um, he gave us some extra ones?"
18 Jackson stated that Lococo "cooked a cookie" (converted cocaine
19 powder into an ounce of crack cocaine), and "He gave me a cookie.
20 He was just cookin' it." J. Edwards said "let me have half that
21 cookie or somethin'." Jackson responded, "Alright." J. Edwards
22 told Jackson he was pulling up to the house, and Jackson said she
23 was right behind him.

24 On October 30, 2002, the Redondo Beach Police Department
25 served a state search warrant at J. Edwards' residence. (Exh. A:
26 Brooks Decl. ¶ 5.) During the search, officers seized, among
27 other items, cocaine powder, crack cocaine, and approximately
28 \$14,000 cash. Subsequent fingerprint analysis of the kilogram of

1 powder cocaine found Lococo's fingerprints on the wrapping
2 materials. The Drug Enforcement Administration ("DEA")
3 laboratory subsequently analyzed the cocaine powder and found it
4 had a net weight of 993 grams. (Exh. B: Bates 4033.)

5 On November 3, 2002, during a conversation with Tawana
6 Edwards, Jackson said that she had just seen him "in there"
7 (referring to J. Edwards, who was in custody after his arrest by
8 the Redondo Beach Police Department). (Exh. A: Call 1-106;
9 Brooks Decl. ¶ 5.) T. Edwards asked "How much money did they
10 get?" Jackson responded "about . . . fourteen thousand."
11 Jackson stated, "It was in the closet. That was off one of the
12 birds, remember. I had just bought a bird, they found a whole
13 bird (one kilogram of cocaine) and what was left off of the other
14 bird, outside though."

15 B. Defendant sold 1 kilogram of cocaine on November 10,
16 2002.

17 On November 10, 2002, at approximately 1:30 p.m., Jackson
18 received a call from J. Edwards. (Exh. A: Call 1-109; Brooks
19 Decl. ¶ 7.) During the conversation, J. Edwards stated, "You
20 need to see what's happen with Big Man (Lococo)." J. Edwards
21 asked, "What color?" Jackson replied that it was "a beige
22 white." J. Edwards stated, "Well, you tell the motherfucker the
23 situation, and what, what's the best deal." Jackson agreed, and
24 J. Edwards told her to call him back.

25 On November 10, 2002, at approximately 1:33 p.m., Jackson
26 called Lococo and told him, "Alright. He (J. Edwards) want
27 another one (kilogram of cocaine powder). He said could you give
28 him a deal?" (Exh. A: Call 1-110; Brooks Decl. ¶ 7.) Lococo

1 stated, "That's about the only thing I can do though." Jackson
2 added, "His (J. Edwards') bail and all that. He's just trying to
3 get back on his feet." Lococo stated, "It's forty-six (\$14,600),
4 right?" Jackson stated, "No. You gave him fourteen-five
5 (\$14,500) remember?" Lococo said that was the lowest he could
6 go. Jackson asked, "You can't do it no fourteen-four (\$14,400)?"
7 Lococo said, "I got to give you your thing too (money for setting
8 up the deal)." Jackson said, "Yeah, I feel you. Alright, I'm
9 going to call him and tell him that you doing it the lowest,"
10 then she would call Lococo back.

11 After Jackson hung up with Lococo, she called J. Edwards.
12 (Exh. A: Call 1-112; Brooks Decl. ¶ 7.) During the conversation,
13 Jackson said "I told him (Lococo) about you and he say that's the
14 lowest he can go." J. Edwards asked, "What? What he say?"
15 Jackson replied, "Fourteen-five (\$14,500)." J. Edwards said
16 alright and he would call her later. After Jackson hung up with
17 J. Edwards, she called Lococo to confirm that they wanted to do
18 the transaction that day. (Exh. A: Call 1-111; Brooks Decl. ¶
19 7.) She told Lococo that she would be sending her daughter
20 there. The price that Lococo charged Jackson and Edwards,
21 \$14,500, is consistent with the market price at that time for one
22 kilogram of powder cocaine. (Exh. A: Brooks Decl. ¶ 7.)

23
24 C. Defendant possessed more than 5 kilograms of cocaine on
June 26, 2003.

25 On June 26, 2003, defendant was found inside the residence
26 at 1307 East 43rd Place, Los Angeles, California, and was placed
27 under arrest pursuant to a federal arrest warrant. (Exh. C.)
28 FBI agents then executed a federal search warrant at the

1 location. (Id.) After a trained narcotic dog alerted to a file
2 cabinet in the living room, agents discovered five brick-size
3 packages and two plastics baggies of a substance later confirmed
4 to be powder cocaine. (Id.; Exh. B: Bates 4188, 4189, 4191.)
5 Subsequent testing by the DEA laboratory indicated that the total
6 weight of powder cocaine was greater than five kilograms.⁴ (Exh.
7 B: Bates 4188, 4189, 4191.) After waiving his Miranda rights,
8 Lococo admitted that he had five kilograms of cocaine at his
9 residence and that he had paid \$13,800 per kilogram. (Exh. C.)

10 V. REQUESTED SENTENCE

11 Although the Ninth Circuit vacated Lococo's sentence due to
12 its finding of an Apprendi error in the Court's finding of the
13 amount of crack cocaine involved in the conspiracy, the Ninth
14 Circuit instructed that on remand, in order to justify a section
15 841(b)(1)(B) enhancement, the Court should make a finding as to
16 the amount of powder cocaine involved in the conspiracy. On
17 remand, the Court should find that the 841(b)(1)(B) enhancement
18 properly applies to Lococo's sentence.

19 As explained above, defendant expressly admitted his
20 involvement with powder cocaine on three occasions during the
21 course of the conspiracy: two sales of powder cocaine and one
22 instance of knowingly possession of powder cocaine. The evidence
23 shows beyond a reasonable doubt that defendant twice sold
24

25 ⁴ As reflected by the summary chart attached to the
26 Rosenberg Declaration, the following drug exhibit numbers
27 identify the powder cocaine amounts seized from Lococo's
28 residence on June 26, 2003: #144 (995.2 grams), #146 (249.5
grams), #140 (996.9 grams), #141 (996.9 grams), #142 (999.9
grams), and #139 (1002 grams). This results in a powder cocaine
total weight of 5,247.5 grams.

1 approximately one kilogram of powder cocaine and possessed more
2 than five kilograms of powder cocaine. These amounts undoubtedly
3 support a finding that the Lococo was knowingly involved in a
4 conspiracy to posses with intent to distribute, and to
5 distribute, more than 500 grams of cocaine. The result of such a
6 finding is to increase defendant's maximum sentence to 40 years
7 pursuant to section 841(b)(1)(B). With a statutory maximum of 40
8 years, the Court may reimpose its original sentence of 262
9 months.⁵

10 VI. CONCLUSION

11 Based on the evidence before the Court, the government
12 respectfully requests that the Court find that the conspiracy in
13 case CR 03-689 involved more than 7 kilograms of powder cocaine,
14 an amount fully and reasonably foreseeable to defendant Lococo,
15 and therefore a section 841(b)(1)(B) enhancement applies to
16 Lococo. Furthermore, since the statutory maximum sentence is
17 forty years imprisonment, the Court's original sentence should be
18 reimposed.

24
25 ⁵ The section 841(b)(1)(B) enhancement affects only the
26 statutory maximum and minimum, not the calculation of the
27 advisory sentencing guidelines. Previously, the government and
28 the court found an advisory guideline range of 262 to 327 months.
The government continues to calculate defendant's base offense
level based upon a total quantity of 6595.05 grams crack cocaine,
which still results in an adjusted offense level of 36 and a
range of 262 to 327 months.